

Samuel Jurta and Martha Jurta

v.

Town of Boscawen

Docket No.: 10397-90

DECISION

The Taxpayers appeal pursuant to RSA 76:16-a, the Town's 1990 assessment of \$323,100.00 (land - \$91,400.00, buildings - \$226,700.00) on 149 North Main Street, consisting of one single family dwelling with 2 car garage, and four rented bungalow apartments (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers' failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) the Penacook bypass and unprofitable lodging business forced Taxpayers to change eight cabins into four rental apartments;

2) as the taxes increase, Taxpayers cannot raise the rents to cover the tax;

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3) two realtors estimated the total Property value at \$225,000.00 in 1990, and a third estimated the rental units value at \$100,000 in 1991; and

4) high property and sewer assessments makes the rental business unprofitable.

The Town argued the assessment was proper because:

1) a review determined the value for the residence was comparable to other residential property owners, and an income approach calculation of the rental property supports the assessment;

2) assessed value is 98% of current value; and

3) methodology was consistent throughout the Town.

Board Rulings

The Taxpayers failed to prove the assessment was disproportional for the following reasons:

1) the Taxpayers only submitted the conclusion of three appraisers' opinions of value but no supporting documentation; thus their conclusions are give little weight. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

2) The Taxpayers complained about the high amount of taxes they must pay. The

amount of property taxes paid by the Taxpayers were determined by two factors:

A) the Property's assessment; and B) the municipality's budget. See gen.,
International Association of Assessing Officers, Property Assessment Valuation

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4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

3) The Town supported this assessment by their assessment comparisons for the residential property and income approach estimate for the four rental units.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Samuel and Martha Jurta, Taxpayers; and Chairman, Selectmen of Boscawen.

Dated:

Melanie J. Ekstrom, Deputy Clerk

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